

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

CWP No.404 of 2006

Reserved on 31.10.2007

Date of decision 7.11.2007

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Pritam Chand

Petitioner

Vs.

State of H.P. and others

Respondents

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Coram:

The Hon'ble Mr. Justice     Rajiv Sharma, Judge.

Whether approved for reporting?<sup>1</sup>     No.

For the Petitioner:             Mr. Anup Rattan, Advocate.

For the respondents:         Mr.M.S.Chandel, Advocate General with  
Ms.Meenakshi Sharma,Dy. Advocate General.

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**Rajiv Sharma, J.**

The brief facts necessary for the adjudication of this petition are that the petitioner was allotted land, measuring 6 kanal 7 marlas on 7.4.1976 under the Himachal Pradesh Village Common Lands Vesting & Utilization Scheme, 1975. He submitted an application on 10.8.1987 for transfer of plot measuring 6 kanal 7 marlas with Khasra No.1061/6. The Deputy Commissioner, Una directed the Tehsildar Amb on 3.6.1995 to prepare a proposal for transfer of land of the petitioner. In sequel to letter dated 3.6.1995 the S.D.O.(c) recommended vide a letter dated 10.8.2000 that the land owned by the State of H.P. measuring 0.24.40 hectares comprised in Khasra No.1351/1, Khewat No.476 Khatauni No.769 situated

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<sup>1</sup> Whether reporters of local papers are allowed to see the judgment? No.

in Village Andhora Nichla, Tehsil Amb be allotted in favour of the petitioner. The Tehsildar, Amb had also sent a communication to the Deputy Commissioner, Una on 13.12.2000 stating therein that as per the report of the field staff since no land was available in Village Polian Purohtan the land could be allotted in Village Andora Nichla which was one kilometer away from the road and recorded as 'kharkan' and the same could be made cultivable by putting hard work. The Tehsildar Amb had annexed copy of the resolution passed by the Gram Panchayat along with his report. The Deputy Commissioner, Una vide a communication dated 29.1.2002 directed the Tehsildar Amb to complete the process and furnish to his office the documents mentioned therein, including copy of jamabandi of Mohal Andora and Polian Prohtan and other documents etc. The Tehsildar Amb furnished the documents as directed by the Deputy Commissioner on 8.4.2002.

The Deputy Commissioner after getting the reports from the filed agency and on the basis of the revenue documents supplied to him sought the permission from the Financial Commissioner-cum-Secretary( Rev.) vide a letter dated 10.5.2002 to allot land comprised in Khasra No.1351/1 measuring 0.24.40 hectares situated in Village Nichla Indora owned and possessed by the State Government in place of land comprising in Khasra No.1984, measuring 0.24.38 hectares situated at Village Polian Prohtan. The Deputy Commissioner, Una sent a reminder to the Financial Commissioner-cum- Secretary (Rev.) on 17.8.2002. The Financial Commissioner-cum-Secretary ( Rev.) returned back the proposal to the Deputy Commissioner, Una on 24.9.2002 to take appropriate action as per office letter No.Rev.BF(7)-1/94 dated 15.11.1995. The Deputy Commissioner, Una instead of taking the decision as directed by the Financial Commissioner-cum-Secretary (Rev.) dated 24.9.2002 again sent a proposal to the Financial Commissioner-cum-Secretary (Rev.) on

29.11.2002 by referring to one letter dated 6./11.7.2000. The Financial Commissioner-cum-Secretary (Rev.) again returned the file to the Deputy Commissioner, Una on 11.10.2004 with the direction to dispose of the case at his own level. The Deputy Commissioner, Una vide a letter dated 24.9.2005 informed the petitioner that the matter pertaining to transfer of land which was under consideration has been dismissed. A subsequent communication was received by the petitioner on 8.12.2005 whereby the Deputy Commissioner had informed him that since the Government has imposed a ban on transfer of land, the application preferred by the petitioner was rejected.

Mr. Anup Rattan learned counsel appearing for the petitioner had strenuously argued that once the case of the petitioner has been recommended by the field agencies for exchange of land, the State could not reject the same. He then contended that the impugned orders Annexures P-17 and P-18 dated 24.9.2005 and 8.12.2005, respectively are not speaking orders. He further contended that the case of the petitioner was required to be considered as per the reports submitted by the Tehsildar Amb, S.D.O. (Civil) with notifications dated 15.11.1995 and 7/11.7.2000 i.e. Annexures P-12 and P-14 , respectively. Mr.M.S.Chandel, learned Advocate General, appearing for the respondent State strenuously argued that as per the terms and conditions imposed at the time of allotment of the land to the petitioner on 7.4.1976, the land was to be made cultivable within a period of one year which the petitioner had failed to do so.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

The petitioner has been allotted land measuring 6-7 kanals on 7.4.1976. The land has been allotted to him under the Himachal Pradesh Village Common Lands Vesting & Utilization Scheme, 1975. He

submitted the application for exchange of land on 10.8.1987. The Deputy Commissioner, Una had sought report from the Tehsildar Amb and Tehsildar, Amb and S.D.O.(Civil) had recommended the case of the petitioner favourably for the exchange of the land. The President, Gram Panchayat, Andora had also favourably recommended the case of the petitioner. The Deputy Commissioner, Una had sought for the revenue papers from the Tehsildar, Amb on 29.1.2002 which were duly supplied by the Tehsildar, Amb on 8.4.2002. The Deputy Commissioner after the receipt of the report from the field agencies and on the basis of the documents furnished by the Tehsildar Amb had specifically recommended the case of the petitioner on 10.5.2002 to the Financial Commissioner-cum-Secretary (Rev.). He also sent a reminder to the Financial Commissioner-cum-Secretary (Rev.) on 7.8.2002. The Financial Commissioner-cum-Secretary(Rev.) did not take any action on the proposal sent by the Deputy Commissioner, Una and the matter was sent back to the Deputy Commissioner, Una on 24.9.2002 with the observation that the case be considered as per letter dated 15.11.1995. It will be apt to reproduce the relevant extract of letter dated 15.11.1995 on the basis of which the case of the petitioner was directed to be considered, reads thus:

“I am directed to say that the State Government have formulated the following three schemes in order to grant land to the landless and other eligible persons in the Pradesh namely:-

- (i) Special grant for Nautor land to landless and other eligible persons.
- (ii) Utilization of surplus Area Scheme, 1975.
- (iii) H.P. Village Common Lands Vesting and Utilization Scheme, 1975.

2. With a view to identify the landless and other eligible persons in the Pradesh, two surveys were got conducted in 1981 and 1983 and most of the persons so identified have been granted land under the above referred three schemes but a few persons were left to whom the land could not be

allotted for the reasons that either the suitable land was not available near the places where they reside or such identified remaining persons were not willing to move to such far off places where such suitable land is available. These left out persons mostly belong to districts Kullu, Chamba and Kangra. In the district of Kullu and Chamba, the Government land is classified as 'Forest Land' and as such land cannot be allotted unless the 'Forest Land' is de-notified under the Forest Conservation Act, 1980 in consultation with the Government of India by the Forest Department. The Government has since stopped allotment of land except by specific relaxation.

3. Since the Government have been monitoring the progress of allotment of land to landless and other eligible persons under the above schemes, it has been brought to the notice of the Government that those allotted land previously face problems of attestation of mutation, delivering possession and exchange of cultivable land in lieu of uncultivable land etc. to the allottees. With a view to remove these and after due consideration, the Government have now decided that such cases should be dealt with by respective District Collectors sympathetically and after prior verification/inspection on the spot they should initiate action to review the cases of following nature as per rules and instructions:-

- i) The persons who were allotted land and where the pattas/certificate and mutations have not been attested, the same should be issued/attested.
- ii) The persons who have been allotted land but the same is not suitable for cultivation/horticulture be given another area by canceling the previous allotment, if available;
- iii) In cases where the allottee is in possession of land at place other than the place where it was allotted, the same may be sanctioned to them upto the extent of an allotment made to them by canceling previous allotment, if the land so occupied is deemed justified for allotment.

4. The District Collectors may take suitable action to resolve the long standing problems of the allottees who have been allotted land under the above schemes only as per above directions. In case on 3(ii) and 3(iii) above while reviewing the cases of land given in exchange or in possession it should be ensured that land now being given, is 100 meter away from road, is not a prime land, land situated in a market or community place and is not prohibited by any other Act/Regulation or orders of any civil court. They are further requested to intimate the number of such cases in their respective districts and also the progress made in this behalf to the Government.”

The Deputy Commissioner did not take any action pursuant to order dated 24.9.2002 and again sent a proposal to the Financial Commissioner-cum-Secretary (Rev.) on 29.11.2002 by referring to letter dated 6/11.7.2000. The Financial Commissioner-cum-Secretary(Rev.) again directed the Deputy Commissioner, Una to take decision at his own level vide a letter dated 11.10.2004. The Deputy Commissioner, Una instead of taking any decision in accordance with law more particularly as per letter dated 15.11.1995 rejected the case of the petitioner vide its letter dated 24.9.2005 without assigning any reasons, though in subsequent communication addressed to the petitioner on 8.12.2005 the reason assigned is that the Government had imposed ban on transfer of allotment of land.

It is evident from observations made here in above that the respondents have failed to take decision required to be taken in accordance with law while considering the case of the petitioner for exchange of land. The petitioner's case has been duly recommended by the field agencies. The Deputy Commissioner, Una had further recommended the case of the petitioner to the Financial Commissioner on 10.5.2002. True it is that as per letter dated 15.11.1995 the decision was

to be taken by the District Collector but as per letter dated 7/11.7.2000 the matter was required to be brought to the notice of the Government for its decision with comprehensive proposal. The Deputy Commissioner has done everything possible while recommending the case of the petitioner. The Deputy Commissioner had also specifically informed the Financial Commissioner-cum- Secretary (Rev.) on 29.11.2002 that the decision was to be taken by the State Government as per office letter No.Rev.B.D.(1)-4/2000 dated 7/11.7.2000. Surprisingly again the Financial Commissioner-cum-Secretary (Rev.) instead of taking decision at his own level had sent the matter to the Deputy Commissioner to take the decision at his own level. The letter dated 11.10.2004 issued by the Financial Commissioner-cum-Secretary (Rev.) to the Deputy Commissioner, Una is in conflict with the letter dated 7/11.7.2000 (Annexure P-14). It was necessary for the Deputy Commissioner again to bring to the notice of the Financial Commissioner-cum-Secretary (Rev.) that he was not competent to take the decision and the same was to be taken by the State Government. Instead of taking recourse to this the Deputy Commissioner rejected the case of the petitioner on 24.9.2005 without a speaking order. Initially no reason was mentioned on 24.9.2005 but in communication dated 8.12.2005 the reason assigned is that the state Government has imposed the ban on transfer of land. The petitioner had submitted application for exchange of land on 10.8.1987 and his case remained pending with the authorities with effect from 10.8.1987 onwards on various levels i.e. in the offices of Tehsildar Amb, S.D.O.(C), Deputy Commissioner, Una, Financial Commissioner-cum-Secretary (Rev.) and the decision to ban the transfer of land was notified vide letter No. Rev.D(F)6-49/2005 dated 3.11.2005. This decision will apply prospectively. The Scheme has been promulgated to help the weaker strata of the society. The petitioner though has been allotted the land but

the same was not cultivable even after putting his best efforts for a number of years from 7.4.1976 upto 10.8.1987.

In view of the above discussion the writ petition is allowed and consequently Annexure P-17 and Annexure P-18 dated 24.9.2005 and 8.12.2005 respectively are quashed and set aside. The respondent No.2 is directed to decide the case of the petitioner for allotment of land strictly as per Annexure P-12 and Annexure P-14 dated 15.11.1995 and 7/11.7.2000 respectively afresh within a period of eight weeks from the receipt of the certified copy of the judgment. The respondent No.2 while deciding the case of the petitioner will duly take into consideration the recommendations made by the Deputy Commissioner, Una for exchange of the land. No order as to costs.

November 7, 2007 (g)

**( Rajiv Sharma ), J.**